IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4569 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UKABHAI AMBABHAI DUDHATRA

Versus

THE STATE OF GUJARAT,

Appearance:

1. Special Civil Application No. 4569 of 2000

MR ANSHIN H DESAI for Petitioner No. 1-15

MS MANISHA SHAH A.G.P. for Respondent No. 1-2, 5.

MR PV HATHI for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. The petitioners have by way of this petition

challenged the impugned order dated 29th March, 2000 passed by the Additional Development Officer, in Appeal No. 73/99, whereby, the order passed by the District Development Officer, Junagadh dated 20th May, 1999 has been confirmed

2. Mr. Desai learned advocate for the petitioners has submitted that the original notice was issued by the District Development Officer under Section 57 of the Gujarat Panchayat Act and there was no reference for initiation of proceedings under Section 267 of the Act and inspite of that while deciding the issue, under Section 57 (1) of the Act, had directed for recovery of the amount, instead of initiating proceedings under Section 267 (1) of the Act. He further submitted that the order passed by the District Development Officer is confirmed by the Development Commissioner.

3. I have heard the learned advocates for the respective parties and have perused the relevant record. Before proceeding with the matter, it is made clear that since the term of the petitioners is over, this Court is not examining the matter with regard to proceedings under Section 57 (1) of the Act. However, for initiation of proceedings under Section 267 (1) of the Act, it is clear that under the Schedule of the Act, the authorized person is Mamlatdar and the District Development Commissioner ought not have passed the order for recovery of the amount for the loss suffered. Mr. Hathi learned advocate for respondent no. 3 has submitted that the only recommendation is to initiate proceedings and not for recovery.

4. Looking to the peculiar facts and circumstances of the case, in my opinion, the order passed by the District Development Officer is required to be modified and accordingly it is modified that the Mamlatdar. Menderda, may initiate appropriate proceedings under Section 267 (2) of the Act. Thus, the order passed by the District Development Officer is not with regard to recovery of payment, but it is for initiation of proceedings under Section 267 of the Act. However, it is clarified that when the proceedings are initiated under Section 267 (2) of the Act, it will be open for the petitioners to raise all these contentions which are raised in this petition since, the Court has examined the matter with regard to the order passed under Section 267 of the Act and has not entered into the merits of the case. Moreover, the Mamlatdar may issue notice to the petitioners and will hear the petitioners. The Mamlatdar may decide and disposed of the matter, without being

influenced by the earlier order passed by the District Development Officer and the present order, since the same has been passed without entering into the merits of the case.

5. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/